

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

COLONY INSURANCE CO.

Plaintiff,

v.

MECHANICAL INTEGRITY, INC.

Defendant.

Case No. 07-834

**DECLARATORY JUDGMENT
ACTION**

AFFADAVIT OF MAILING

I, Daniel L. McKenty, being duly sworn, deposes and says:

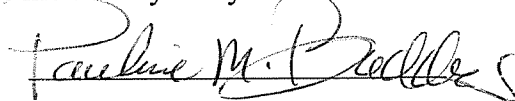
1. I am an attorney admitted to practice before the United States District Court for the District of Delaware and I am a partner in the law firm of Heckler & Frabizzio, counsel for Colony Insurance Company, Inc. ("Colony"), plaintiff herein.

2. On February 12, 2008, I caused to be mailed by registered mail, return receipt requested, a letter enclosing a copy of the copy of the Complaint, pursuant to 10 Del. C. § 3104, to Mechanical Integrity, Inc. 1423 First Street, Suite A, Humble Texas 77338 attached as Exhibit A. An authorized representative of Mechanical Integrity received the document on February 19, 2008 as evidenced by the return receipt attached as Exhibit B.

Dated this 26th day of February, 2008


Daniel L. McKenty

SWORN AND SUSCRIBED before me the day and year foresaid.



Notary Public
My commission expires:

EXHIBIT A

HECKLER & FRABIZZIO

ATTORNEYS AT LAW

THE CORPORATE PLAZA

800 DELAWARE AVENUE

SUITE 200

POST OFFICE BOX 128

WILMINGTON, DELAWARE 19899-0128

AREA CODE 302

573-4800

TELECOPIER

573-4806

GEORGE B. HECKLER, JR.
ANTHONY M. FRABIZZIO
MARIA PARIS NEWILL
DANIEL L. McKENTY
WILLIAM D. RIMMER*
JOHN W. MORGAN
JOHN GILBERT*
DAVID R. BATMAN
PATRICK G. ROCK^Δ
CHERYL A. WARD
ROBERT J. DEARY*
KRISTA E. BUTLER*
AYESHA S. CHACKO*
CASEY W. LESIAK⁺

* DELAWARE AND PENNSYLVANIA BAR

^Δ DELAWARE, MASSACHUSETTS AND
MAINE BAR

⁺ PENNSYLVANIA BAR ONLY

February 12, 2008
Refer to PI07-17829

**BY REGISTERED MAIL
RETURN RECEIPT REQUESTED**

Mechanical Integrity, Inc.
1423 First Street, Suite A
Humble, TX 77338

RE: Colony Insurance Co. v. Mechanical Integrity
Claim No. C145359; D/L 11/18/05

Dear Sirs:

You have been named as a Defendant in the Complaint filed in the above-captioned civil action in the United States District of Delaware on December 20, 2007. In accordance with the provisions of 10 Del. C. § 3104, enclosed herewith is a copy of the Summons and Complaint, served upon the Secretary of State of the State of Delaware on February 7, 2008 in connection with the above captioned case.

The purpose of this letter is to advise you that service of the original of such process has been upon the Secretary of State of the State of Delaware, and that under 10 Del. C. § 3104 such service is effectual to all intents and purposes as if it had been made upon you personally within this state.

Very truly yours,

Daniel L. McKenty

Enclosures

\$2.00
included

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

District of

Delaware

Colony Insurance Co

SUMMONS IN A CIVIL CASE

v.

Mechanical Integrity, Inc.

CASE NUMBER: 07-834 SLR-LPS

TO: (Name and address of Defendant)

Mechanical Integrity Inc. C/O

Secretary of State of Delaware in
accordance with 10 Del C. § 3104.

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Daniel L. McKenty
Heckler & Frabizzio
800 Delaware Ave
Suite 200
Wilmington, DE 19801an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

PETER T. DALLEO

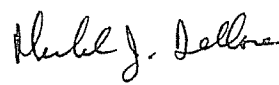
JAN - 4 2008

CLERK

(By) DEPUTY CLERK

DATE

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the summons & complaint was made by me ⁽¹⁾	DATE 2/4/2008 @ 3:52 p.m.	
NAME OF SERVER (PRINT) Michael J. Dellose	TITLE Special Process Server	
Check one box below to indicate appropriate method of service		
<p><input checked="" type="checkbox"/> Served personally upon the defendant by serving Karen Charbonneau, government employee, c/o Secretary of State, Duke of York Street @ Federal Lane, Dover, DE 19901</p> <p>50, F, W, 5'6", 140 pounds, blonde hair, no glasses</p> <p><input type="checkbox"/> Left copies thereof at the defendant's house or usual place of abode with a person of suitable age and discretion then residing therein.</p> <p>Name of person with whom the summons and complaint were</p> <p><input type="checkbox"/> Returned unexecuted:</p> <p><input type="checkbox"/> Other (specify):</p>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United State of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on <u>2/7/2008</u> Date</p> <p> Michael J. Dellose</p> <p>O'ROURKE INVESTIGATIVE ASSOCIATES, INC. 1225 King Street, Suite 400 P. O. Box 368 Wilmington, DE 19899-0368</p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS <u>Colony Insurance Company</u>	DEFENDANTS <u>Mechanical Integrity, Inc.</u>
(b) County of Residence of First Listed Plaintiff <u>Richmond, VA</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant <u>HARRIS County, TX</u> (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorney's (Firm Name, Address, and Telephone Number) <u>HECKLER & Frabizzio, 800 Delaware Ave.</u> <u>Wilmington, DE 19801</u>	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width: 100%;"> <tr> <th style="text-align: left;">Citizen of This State</th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> <th style="text-align: left;">Incorporated or Principal Place of Business In This State</th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> </tr> <tr> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF																				
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<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 USC § 2201, 10 Del. C. § 3114</u> Brief description of cause: <u>Declaratory Judgment</u>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND: <u>Equitable Relief</u>	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____ DOCKET NUMBER <u>07-346</u>
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DATE <u>12/20/07</u>	SIGNATURE OF ATTORNEY OF RECORD _____
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FOR OFFICE USE ONLY	RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

COLONY INSURANCE CO.

Plaintiff,

v.

MECHANICAL INTEGRITY, INC.

Defendant.

DECLARATORY JUDGMENT
ACTION

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2007 DEC 20 PM 3:17

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Colony Insurance Company ("Colony"), as and for its declaratory judgment complaint against Defendant, Mechanical Integrity, Inc. ("MI") alleges as follows:

Nature of Action

1. This is an action requesting the Court to issue a declaratory judgment denying that plaintiff Colony must indemnify and/or defend MI in a suit brought against MI by E.I. Du Pont de Nemours and Company ("DuPont") in this court based on an insurance policy issued to MI from Colony.

The Parties

2. Plaintiff, Colony, is an insurance company with its place of domicile in Richmond Virginia. Colony is licensed to provide insurance in the State of Delaware.

3 Defendant, Mechanical Integrity, Inc. ("MI") is a Texas Corporation with its principal place of business located at 1423 First Street, Suite A, Humble, Texas 77338.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because diversity of citizenship exists between plaintiff and the defendant, and the value of the object of the underlying litigation exceeds \$75,000.

5. The Court has personal jurisdiction over the defendant pursuant to 10 Del. C. § 3104.

6. Venue is proper in this district pursuant to 28 U.S. C. § 1391 because the Defendant is subject to personal jurisdiction in this District.

Facts

7. On June 1, 2007, MI was sued in the District Court of Delaware in E. I. Dupont de Nemours and Company v. Mechanical Integrity, Inc., Civil Action No: 07-346.

8. The Complaint in the above-captioned matter alleged that MI committed breach of contract, misrepresentation, and fraud based upon a 2004 contract between MI and Dupont, a Delaware Corporation. Pursuant to that contract, MI was required to perform an inspection of approximately 3,600 feet of pipeline used to transport chloroform, a hazardous material, to Dupont's Louisville Kentucky facility. Due to MI's alleged failure to properly conduct the inspection, a serious leak in the pipeline caused a chloroform leak and DuPont was forced to expend over \$2,000,000 to remediate the area where the leak occurred. (See Copy of DuPont Complaint attached hereto as Exhibit A).

9. At all times pertinent, Colony issued and had in full force and effect a policy of insurance to MI with policy number GL120585 (the "Policy").

10. On June 25, 2007, MI filed a claim with Colony requesting defense and indemnity pertaining to the Dupont suit.

11. The Policy specifically included a Hazardous Materials Exclusion Endorsement, which excluded any claims, which arose out of:

- a. Bodily injury", "property damage" or "personal and advertising injury" which would not have occurred in whole or part but for the actual, alleged, or threatened discharge, dispersal, seepage migration, release or escape of "hazardous materials" at any time.
- b. Pollution cost or expense.
- c. Any obligations to share damages with or indemnify another party whom must pay damages because of injury or damage relating to "hazardous materials".
- d. Any supervision, instructions, recommendations, warning or advice which should have been given in connection with paragraphs (1), (2), or (3) above.

12. The Policy also specifically included a Professional Services Exclusion Endorsement, which excluded any claims for "bodily injury", "property damage" or "personal and advertising injury" arising out of or resulting from the rendering or failure to render any "professional service" except by endorsement to the Policy and only to the extent of such endorsement. The policy defined "Professional Services" as "engineering services including any related supervisory or inspection services".

13. MI's actions of contracting with DuPont to inspect a pipeline used to transport chloroform, a hazardous material, and allegedly negligently performing these actions falls squarely within the purview of the Hazardous Materials and Professional Services Exclusions found in the Policy.

14. Further, if it is proven that MI committed fraud, as alleged in the Complaint, the Policy is void as to any claim as it relates to the allegations of fraud.

15. As such, MI's claim is not covered under the Policy because it is excluded by the specific policy exclusions enumerated above.

WHEREFORE, Plaintiff respectfully requests the Court to enter an Order pursuant to 28 U.S.C. § 2201 declaring the rights of parties to this action, declaring that Plaintiff is under no duty to indemnify or defend under the Policy of insurance issued by Plaintiff to Defendant, and costs, attorneys' fees, and for any other relief which the Court deems appropriate.

~~HECKLER & FRABIZZIO~~


DANIEL L. MCKENTY (I.D. No. 2689)

KRISTA E. BUTLER (I.D. No. 4526)

The Corporate Plaza

800 Delaware Avenue, Suite 200

P.O. Box 128

Wilmington, DE 19899-0128

CERTIFIED: 1/4/08
AS A TRUE COPY:

ATTEST:

PETER T. DALLEO, CLERK

BY 

Deputy Clerk

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE

2007 DEC 20 PM 3:21

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 07 - 834

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

12/20/27

(Date forms issued)

Krista Butler
(Signature of Party or their Representative)

Krista Butler
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action

EXHIBIT B

SENDER: COMPLETE THIS SECTION

- ☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
☒ Print your name and address on the reverse so that we can return the card to you.
☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

TAC
MECHANICAL INTEGRITY
1423 FIRST ST. SUITE A.
HUMBLE, TX 77338

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service type

☐ Certified Mail☐ Express Mail☒ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

RB 690 330 106 US

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15